

Memorandum of Agreement
on
National Interest Action (NIA) Code Management
Between
U.S. Department of Defense
Defense Pricing & Contracting
And
U.S. Department of Homeland Security
Office of the Chief Procurement Officer
And
U.S. General Services Administration
Integrated Award Environment (IAE) Program Management Office (PMO)

1. Purpose and Scope.

The purpose of this Memorandum of Agreement (MOA) between the Department of Defense (DoD), the Department of Homeland Security (DHS), and the General Services Administration (GSA) is to document the responsibilities necessary to make timely updates to the "National Interest Action" (NIA) field in the Federal Procurement Data System (and any successor system). NIA coding allows Federal agencies to report certain procurements in direct support of response and recovery efforts associated with those selected major disasters, emergency declarations, and contingency operations with major multi-agency procurement impacts.

This document supersedes and replaces the MOA effective on June 1, 2018.

2. No NIA Impact on Procurement Authority, Procedures, and Thresholds.

The NIA field facilitates enhanced FPDS reporting only and grants no statutory or regulatory emergency acquisition flexibilities; it is simply an identifier assigned to enable easier identification of certain procurement actions when reviewing reports. The granting of an NIA code is not a FAR Part 18 acquisition flexibility. An NIA code is not automatically assigned when an agency exercises emergency procurement authorities and an NIA code is not automatically assigned for all recognized disasters or contingency operations. The creation or use of NIA codes modifies no procurement thresholds and in no way implies that an agency can begin using emergency procurement authorities. Agencies are still responsible for following the procedures in FAR Part 18 when using emergency acquisition flexibilities.

3. Parties and Roles.

- a. DoD acts as a requester for new and extended NIA codes on behalf of the military departments and Defense agencies, coordinating its requests with DHS.
- b. DHS acts as a requester for new and extended NIA codes for itself and on behalf of other civilian agencies, coordinating its requests with DoD.
- c. GSA acts as the servicing agency, acting on NIA requests from DoD or DHS to modify FPDS.
- d. The Office of Management and Budget Office of Federal Procurement Policy serves as the resolution point for any potential disagreements among the parties as described in Section 11 of this document.

4. Authorities and References.

- a. Federal Acquisition Regulation (FAR) Parts 2, 18, and 26
- b. Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S. Code § 5121 *et seq.*)
- c. Special emergency procurement authority, 41 U.S. Code § 1903
- d. Definition of "contingency operation" at 10 U.S. Code § 101(a)(13) as implemented in FAR 2.101
- e. OMB Emergency Acquisitions Guide (January 14, 2011)
- f. Office of Federal Procurement Policy Act (OFPP Act) (P.L. 93-400, as amended.)

5. Background.

Timely and accurate reporting of procurement actions by Federal agencies to FPDS is required by the OFPP Act as amended, 41 U.S. Code § 410 *et seq.* and provides a basis for recurring and special reports to the President, the Congress, the Government Accountability Office, Federal executive agencies, and the general public. The FPDS is the authoritative source of U.S. Federal procurement data used in international negotiations and conversations and to assess the impact of Federal contracting on the nation's economy and the extent to which small, veteran owned, service-disabled-veteran-owned small, HUBZone small, disadvantaged small, and women-owned small business concerns are sharing in Federal contracts. In addition, FPDS contract action reporting provides information for other policy and management control purposes and enhances public access.

Emergency acquisitions conducted under FAR Part 18 are often high visibility contract actions, both politically and publicly, requiring frequent reporting requirements from Federal agencies as what contracts have been awarded in support of the emergency. Therefore, as these contracts are awarded, it is imperative that Federal agencies be able to quickly flag those contracts awarded in direct support to the initial response efforts associated with selected highest visibility major disasters, emergency declarations, and contingency operations with significant multi-agency Federal procurement impact. FPDS is a summary-level data repository and as such the NIA code provides no detail into

discreet disaster fund spending because both disaster and non-disaster funds may be combined on a single CAR.

6. Criteria.

From among the major disaster and emergency declarations issued under the Stafford Act, often numbering in many dozens each fiscal year, agencies elect to increase procurement thresholds in only a relatively few selected major disasters with the greatest national procurement impact. Agencies may also choose to increase procurement thresholds in response to the declaration of a formal contingency operation or in defense or recovery from certain attacks.

Agencies have the discretion to exercise their special emergency procurement authority under 41 U.S. Code § 1903 when those statutory triggers exist permitting an emergency increase in procurement thresholds. But even when the President declares a major disaster or emergency (or when a contingency operation is declared) assignment of an NIA code is not appropriate in every case. Only those highest visibility incidents with the following characteristics should be considered for an NIA code request:

- a. Commitment of significant national financial resources,
- b. Nationwide (not just regional) mobilization,
- c. Significant multi-agency Federal *procurement* impact (which is different than weather or other disaster impact)
- d. Great national interest, and
- e. Widespread political interest.

DoD and DHS may request a new NIA code value only when:

- a. Two or more Federal agencies exercise, or intend to exercise, the 41 U.S. Code § 1903 special emergency procurement authority to increase procurement thresholds, or
- b. DoD has designated a "contingency operation" as defined in FAR 2.101, regardless of whether or not procurement thresholds are increased.

7. Responsibilities-New NIA Codes

- a. DoD shall:
 - i. Review contingency operation declarations made by the Secretary of Defense to determine which operations should be included in FPDS as NIAs because of their significant procurement impact and high visibility.
 - ii. Assign a short descriptive name (e.g., "Operation United Assistance - Ebola West Africa") as the NIA field value that will be added to FPDS.
 - iii. In an e-mail request to GSA, provide the short descriptive name, the start date, and the end date. (See Section 8 of this document for additional information on selecting end dates.)

- iv. Note that the Defense Pricing & Contracting (DPC) office is the organization within DoD responsible for executing these procedures and submitting requests to GSA.

b. DHS shall:

- i. Review NIA code requests from Federal civilian agencies with increased agency procurement thresholds to determine which events should be included in FPDS as NIAs because of their significant multi-agency procurement impact and highest visibility.
- ii. Assign a short descriptive name (e.g., "Hurricane Maria 2017") as the NIA field value that will be added to FPDS.
- iii. In an e-mail request to GSA, provide the short descriptive name, the start date, and the end date. (See Section 8 of this document for additional information on selecting end dates.)
- iv. Note that the DHS Office of the Chief Procurement Officer (OCPO) is the civilian agency office responsible for executing these procedures and submitting requests to GSA.

c. GSA shall:

- i. Ensure the NIA field is added to FPDS within two business days of the request from DoD or DHS and that the field is available to all users.
- ii. Notify FPDS users via the change management process of a new, extended, or "end-dated" NIA code.
- iii. Notify the DoD or DHS requester that a new NIA field value is functional and fully tested in FPDS. GSA shall ensure that the field value is available on all FPDS servers so that all users are able to see and select the new value.
- iv. Notify Federal Senior Procurement Executives and Chief Acquisition Officers via the GSA OGP Council support organizations of the availability of a new NIA as soon as it is available to users.

8. Selecting End Dates.

For this MOA, "end-dating" NIAs means that the NIA will be deactivated in FPDS and therefore cannot be selected when reporting new contract actions.

Every NIA should have an "end date." Varying circumstances surrounding individual NIAs make it difficult to define a uniform standard to end-dating an NIA value. Emergency and disaster funding resulting in contracts for recovery efforts can extend for many years after the event. Reasonable judgement must be applied to each named NIA to determine when it is best to stop citing it in relation to contract actions.

Criteria for "end-dating" NIAs includes, but is not limited to, the following:

- a. Agencies have permitted procurement thresholds to return to their pre-disaster levels.
- b. The related national mobilization or military operation has ended.
- c. Remaining or predicted contracting activity applicable to the NIA has become routine and, by applying sound judgement and management expertise, it is prudent to no longer track contract actions using a system-wide NIA value.
- d. A review of the number of applicable government-wide contract actions shows a consistent decrease in actions awarded from when the NIA code was implemented.

For civilian agency actions, DHS is responsible for determining that an NIA should be "end-dated." For contingency operations, DoD is responsible for determining that an NIA should be "end-dated." The responsible party must notify GSA in the same manner as described in Section 7.

GSA has the responsibility to actually "end-date" an NIA value in FPDS. GSA will inform DHS and DoD that the action has been completed.

Although a management decision can be made at any time to "end-date" individual NIAs, DHS and DoD will, at a minimum, review active NIAs at the end of each fiscal year to determine whether to extend them or permit them to expire.

9. Extensions.

In the same manner as when requesting new NIA values, DoD and DHS may request that expired or expiring NIA values be extended to a revised end date. DoD and DHS, in response to requests from agency contract leadership, shall use the "end-dating" criteria in Section 8 to exercise their discretion in forwarding extension requests to GSA for FPDS implementation. Extending an NIA value end date is appropriate when two or more agencies have a current or anticipated need for tracking a significant number of contract actions and do not have a reasonable alternate method of identifying and internally tracking those emergency acquisitions.

10. Reporting Considerations.

In accordance with FAR Subpart 4.6, contracts with a total estimated value exceeding the micro-purchase threshold (MPT) are required to be reported to FPDS. If an agency increases the MPT in response to a 41 U.S. Code§ 1903 emergency, then the FPDS reporting threshold would also be increased.

11. Resolution Mechanism.

In the event of any disagreement arising under this MOA, the parties shall attempt a good faith negotiation to resolve the disagreement with the assistance of OMB. If the parties are unable to reach agreement, OMB is authorized to resolve the dispute.

12. Effective Date and Duration of Agreement.

The effective date of this MOA will be from the date of the last signature on this document. The agreement will remain in effect until cancelled or amended in writing by mutual consent of the parties.

13. Approvals.

The following officials agree to the terms and conditions of this MOA:

(b)(6)

Judith R. Zawatsky
Assistant Commissioner, Office of Systems Management
Federal Acquisition Service
U.S. General Services Administration

12 July 2019
Date

(b)(6)

Ann Shujath
Acting Executive Director, Acquisition Policy and Legislation
Office of the Chief Procurement Officer
Department of Homeland Security

7-12-2019
Date

(b)(6)

Kim Herrington
Acting Principal Director, Defense Pricing and Contracting
Department of Defense

8/20/19
Date

I 4. Appendix A - Agency Points of Contact.

Updates to this Appendix do not required a signed amendment to the MOA document. These Points of Contact may be updated by the parties without a revised MOA.

DoD Primary: Lisa Romney, (b)(6) @mail.mil

DoD Alternate: LeAntha Sumpter, (b)(6) @mail.mil

DHS Primary: (b)(6) @hq.dhs.gov

DHS Alternate: Catherine Benavides, (b)(6) @hq.dhs.gov

GSA Primary: (b)(6) @gsa.gov

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